

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE BILAL NAZKI
and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 16584 of 1997

Between:

M/s.Sree Nagendra Prasad Traders, Groundnut Merchants,
Proddutur, rep. by N.Balakrishna.

..... PETITIONER

AND

1. The Assistant Commercial Tax Officer, Intelligence, Adoni.
2. The Deputy Commissioner (CT), Kurnool Division, Kurnool.
3. The Deputy Commissioner (CT), Chittoor Division, Chittoor.
4. The Commercial Tax Officer-II, Proddutur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction by quashing the circular dated 18-11-1995 of the 3rd respondent which direct the check post authorities and assessing authorities to collect advance tax on transport of groundnuts as illegal and arbitrary and violative of Article 265 of the Constitution of India and APGST Act and there by restrain the respondents from collecting advance tax from the Petitioner on its future consignments of groundnut and direct the 4th respondent to refund of Rs.1,760/- under Rule 46(4) relating to tax collected at check post.

Counsel for the Petitioner:MR.P.GIRISH KUMAR

**Counsel for the Respondents :Spl. Standing Council for
Commercial Taxes.**

The Court made the following :

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ORDER : (per Sri Bilal Nazki, J)

Heard learned Counsel for the parties.

Circular D.O.on.Ref.C3.4741/95, issued by 3rd respondent-Deputy Commissioner (CT), is under challenge. It reads *inter-alia* as under ;

“If tax is collected from the dealers of the other circles or Divisions, the advice of collection shall be sent to the area concerned immediately.

I am to further impress upon you that the revenue position of the division is precarious and every possible effort shall be made to boost up the revenue position of the Division by all means. The Officers who allow the vehicle transporting Ground Nut and Ground Nut Seeds without collection of advance tax shall be dealt with severally.”

The learned Government Pleader has not been able to show us any power attributable to the Deputy Commissioner by which he could direct the officers of the Check posts to collect advance tax by stopping vehicles at the check posts. We have already held in an earlier judgment of this Court in W.P.No.7978 of 2004 that there is no power to the authorities under the A.P.General Sales Tax Act to collect any advance tax. Therefore the Circular itself is bad and ultravires to the Act.

The Writ Petition is accordingly allowed. Circular D.O.on.Ref. C3.4741/95, issued by 3rd respondent-Deputy Commissioner (CT), is quashed. The petitioner is at liberty to move the Department for refund of tax paid, if any. No costs.

(BILAL NAZKI, J)

23rd September, 2004.

(S.ANANDA REDDY, J)

ajr

To

- 1 The Assistant Commercial Tax Officer, Intelligence, Adoni.
- 2 The Deputy Commissioner (CT), Kurnool Division, Kurnool.
- 3 The Deputy Commissioner (CT), Chittoor Division, Chittoor.
- 4 The Commercial Tax Officer-II, Proddutur.
- 5 Two C.D. copies.